STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MICHAEL DAVID KRAGOR, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

MICHAEL DAVID KRAGOR,

Respondent-Appellant.

UNPUBLISHED
July 25, 2013

No. 307470
Kent Circuit Court
Family Division
LC Nos. 07-053339-DL
08-053150-DL

Before: MURPHY, C.J., and SAAD and SERVITTO, JJ.

PER CURIAM.

Respondent Michael David Kragor appeals by delayed leave granted the family court's order extending jurisdiction over Kragor beyond his nineteenth birthday under MCL 769.1b and MCR 3.945(B). Kragor had been made a temporary ward of the family court for offenses that he committed as a juvenile. After Kragor's nineteenth birthday, the family court conducted a hearing and ruled in favor of extending jurisdiction until age twenty-one, subject to periodic review. Pursuant to court rule and various statutory provisions, we hold that Kragor should have been released when he turned nineteen years old, given that the family court failed to conduct a hearing to extend its jurisdiction until after Kragor's nineteenth birthday. The family court effectively lost its jurisdictional authority over Kragor because of the compliance failure. The hearing to extend jurisdiction had originally been scheduled for a date three days shy of Kragor's nineteenth birthday, but was adjourned. And although, under court rule and statute, a hearing to extend jurisdiction may be conducted after a juvenile's nineteenth birthday if a scheduled hearing prior to the birthday had been adjourned for good cause, there is nothing in the record here showing "good cause" for the adjournment. Accordingly, we reverse the family court's order extending jurisdiction over Kragor and remand for entry of an order recognizing that the family court actually lost jurisdiction on Kragor's nineteenth birthday and voiding any orders

assessing costs for benefits and services or other penalties associated with the period during which jurisdiction was improperly exercised.[1]

Kragor was born on August 22, 1992. In a petition filed in August 2007 in the Kent County Family Court, it was alleged that at the end of June or beginning of July 2007 when Kragor was 14 years old, he committed the offenses of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a) (sexual penetration with person under the age of 13), and second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a) (sexual contact with person under the age of 13). A supplemental petition was filed in September 2007, adding a charge of gross indecency, MCL 750.338b, relative to the same time period and victim associated with the CSC I and II charges. Subsequently, in late September 2007, Kragor entered a plea of admission to the gross indecency charge, the CSC I charge was dismissed by agreement of the prosecutor, and the CSC II charge was held in abeyance. Kragor was made a temporary ward of the family court and ordered to reside in the county juvenile detention facility pending a disposition hearing. Thereafter, pursuant to periodic dispositional orders, Kragor was placed at various times in foster care, the county juvenile detention facility, or alternative juvenile detention facilities, and he was assigned a probation officer.

In May of 2008, an order to apprehend and detain Kragor was entered after he went absent without leave from one of the alternative juvenile facilities. The record reflects that during his period of flight, he engaged in conduct that subsequently gave rise to charges for unlawfully driving away an automobile (UDAA), MCL 750.413, in Allegan County and for a second UDAA offense with respect to a vehicle in Kalamazoo County. He was also later charged with concealing stolen property in Kalamazoo County, i.e., the car that he had allegedly stolen in Allegan County. Kragor was apprehended, the matters were transferred to the Kent County Family Court, and in September 2008, Kragor entered pleas of admission on the UDAA

[1] We note that Kragor, after a dispositional review hearing, was released from the family court's jurisdiction about ten months after the order extending jurisdiction was entered and during the pendency of this appeal. Because costs for services and care were assessed for the period of time following the extension of jurisdiction, the appeal is not moot. See *Mead v Batchlor*, 435 Mich 480, 486; 460 NW2d 493 (1990) ("Where a court's adverse judgment may have collateral legal consequences for a defendant, the issue is not necessarily moot."), abrogated on other grounds *Turner v Rogers*, __ US __; 131 S Ct 2507; 180 L Ed 2d 452 (2011); *Contesti v Attorney General*, 164 Mich App 271, 278; 416 NW2d 410 (1987) (an issue is rendered moot when an event occurs that makes it "impossible" for a reviewing court to grant relief). Furthermore, the appeal could be viewed as presenting an issue of public significance, i.e., the detention of a young adult, which is likely to recur, yet evade judicial review, where there is a relatively short time span between the ages of nineteen and twenty-one, with possible release even before age twenty-one, and where the appellate process can be quite time-consuming. See *In re Midland Publishing Co, Inc*, 420 Mich 148, 152 n 2; 362 NW2d 580 (1984) ("Although the issues presented in this appeal thus appear moot, this Court will consider them because they are of public significance and are likely to recur, yet may evade judicial review.").

and concealing stolen property offenses committed in Kalamazoo County, with the Allegan County UDAA being dismissed by agreement.

Kragor remained a temporary ward of the family court and was housed in various juvenile facilities and, at times, the county jail. In February 2010, Kragor entered a plea of admission on the CSC II charge that had previously been held in abeyance, and the temporary wardship was continued. On August 11, 2011, at which point Kragor was eighteen years old but only eleven days away from turning nineteen, a standard dispositional review hearing was conducted. At the hearing, the family court reviewed Kragor's progress, asked him some questions about various issues, and the court heard from juvenile personnel about matters of continuing concern as well as positive aspects regarding Kragor's behavior while in detention. At the end of the hearing, the family court stated that it was continuing its jurisdiction over Kragor as a temporary ward, that his placement at a particular juvenile facility would be continued, and that the prosecutor was requesting a hearing to extend jurisdiction to the age of twenty-one. The court noted that the hearing would be held on August 19, 2011, which was three days shy of Kragor's nineteenth birthday.

No hearing was conducted on August 19, 2011. There are no filed documents in the lower court record itself explaining why there was no hearing; however, the register of actions indicates that the hearing was "cancelled" and "adjourned due to lack of notice." Entries in the register of actions under the date of August 19, 2011, make reference to a hearing date on September 1, 2011. In an order of disposition dated three days after Kragor's nineteenth birthday, August 25, 2011, which order pertained to the court's rulings at the dispositional hearing on August 11, 2011, it was indicated that the next scheduled hearing was set for September 1, 2011, and that the notice in the order was "the only notice you will receive of the above-stated hearing." A proof of service reflects that this order, which also contained the language "notice of hearing" in the caption, was mailed to Kragor's attorney and others on August 25, 2011.[2] The order/notice did not expressly state that the hearing concerned the extension of jurisdiction; rather, it simply made reference to a review hearing.

On September 1, 2011, more than a week past Kragor's nineteenth birthday, a hearing was held on the prosecutor's request to extend jurisdiction. At the commencement of the hearing, Kragor argued that the family court was required to release him because it no longer had jurisdiction, given that the hearing was conducted on less than 14 days' notice and because the hearing was being held after he had turned nineteen years old. The prosecutor maintained that Kragor waived the arguments raised, as he had previously indicated a willingness to proceed on September 1, 2011. In response, the family court stated, "even if the [c]ourt were to refuse the argument that [the prosecutor] puts forward, that he waived any objection . . ., the [c]ourt is

[2] In the extensive court file, we did locate a separate notice of hearing that was directed solely to Kragor's probation officer. The notice pertained to the hearing on September 1, 2011, and was dated August 22, 2011. The register of actions indicated that on August 22, 2011, Kragor's nineteenth birthday, a hearing to extend jurisdiction was scheduled by the court for September 1, 2011.

aware that all along there [were] discussions, *probably not put on the record but off the record*, as to having this hearing to extend jurisdiction pursuant to MC[R] 3.945." (Emphasis added.) The family court proceeded to deny Kragor's request to be released on the basis that the court rule and statutes did not make clear the consequences of failure to comply with their provisions and that the provisions were geared toward protection of the public. The court conducted the hearing and ruled in favor of extending the court's jurisdiction over Kragor, finding that he had not proven, by a preponderance of the evidence, that he was now rehabilitated and no longer a serious risk to public safety.

On appeal, Kragor argues that the family court violated MCR 3.945(B) and various statutory provisions by conducting the hearing after his nineteenth birthday and upon inadequate notice, thereby committing error in extending jurisdiction over him. Kragor also maintains that MCL 712A.18d(2) violates due process and equal protection rights, where it places the burden of proof on a respondent to show by a preponderance of the evidence that he or she has been rehabilitated and no longer presents a serious risk to public safety. Because we agree with Kragor that the family court lost jurisdiction, it is unnecessary for us to address the constitutional argument.

We review de novo jurisdictional issues and matters concerning the construction of court rules and statutes. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008). The construction of court rules and the interpretation of statutes are governed by the same principles. *Ligons v Crittenton Hosp*, 490 Mich 61, 70; 803 NW2d 271 (2011). "Our goal when interpreting and applying statutes or court rules is to give effect to the plain meaning of the text." *Id.* When the text of a court rule or statute is unambiguous, this Court applies the language as written absent construction or interpretation. *Id.*

MCR 3.945 addresses dispositional review in juvenile delinquency cases, and subsection (B)(1) specifically concerns hearings to extend jurisdiction, providing in relevant part:

> When a juvenile committed under MCL 712A.18(1)(e) for an offense specified in MCL 712A.18d[3] remains under court jurisdiction after the juvenile's 18th birthday, the court must conduct a hearing to determine whether to extend the court's jurisdiction to age 21, pursuant to MCL 712A.18d.
>
> (a) Unless adjourned for good cause, a commitment review hearing *must be held as nearly as possible to, but before, the juvenile's 19th birthday*.
>
> (b) Notice of the hearing *must be given* to the prosecuting attorney, the agency or the superintendent of the institution or facility to which the juvenile has been committed, the juvenile, and, if the address or whereabouts are known, the

[3] The offense of CSC II, to which Kragor entered a plea of admission, is one of the specified offenses under MCL 712A.18d(1).

> parent, guardian or legal custodian of the juvenile, *at least 14 days before the hearing*. . . . . [Emphasis added.[4]]

The purpose of the review hearing is 'to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety." MCL 712A.18d(1); MCL 769.1b(1); see also MCR 3.945(B)(4). In a case where the court finds "that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety, jurisdiction over the juvenile shall be continued." MCL 712A.18d(1); MCL 769.1b(1). A number of specific factors or criteria, e.g., the juvenile's potential for violent conduct and willingness to accept responsibility for past behavior, must be examined by the court in determining whether to extend jurisdiction. MCL 712A.18d(1)(a)-(g); MCL 769.1b(1)(a)-(g); MCR 3.945(B)(4)(a)-(g). The juvenile is required to prove by a preponderance of the evidence that he or she has indeed been rehabilitated and that the juvenile does not present a serious risk to public safety. MCL 712A.18d(2); MCR 3.945(B)(4).

MCR 3.945(B)(1)(a) makes abundantly clear that in order for a court to maintain jurisdiction over a juvenile past the age of nineteen, a hearing to extend jurisdiction must be conducted pursuant to MCL 712A.18d and it must be held before the juvenile's nineteenth birthday absent an adjournment for good cause. Moreover, under MCR 3.945(B)(1)(b), the notice for the hearing must be given at least 14 days before the hearing. Consistent with MCR 3.945(B)(1)(a), MCL 712A.18d(3) provides that "[u]nless adjourned for good cause, a review hearing *shall* be scheduled and held as near as possible to, *but before*, the juvenile's nineteenth birthday." (Emphasis added.) Nearly identical language is found in MCL 769.1b(2). Consistent with MCR 3.945(B)(1)(b), MCL 712A.18d(4) and MCL 769.1b(3) provide that "[n]ot less than *14 days before a review hearing is to be conducted*, the prosecuting attorney, the juvenile, and, if addresses are known, the juvenile's parent or guardian *shall be notified*." (Emphasis added.) The notice is required to state that the court may extend jurisdiction over the juvenile and that the juvenile has a right to legal counsel. MCL 712A.18d(4); MCL 769.1b(3). Finally, MCL 712A.18c(4) provides that a "child *shall be automatically released* upon reaching 19 years of age[,]" unless the court has exercised its authority under MCL 712A.18d to extend jurisdiction. (Emphasis added.)

In the prosecution's appellate brief, the only argument on the jurisdictional issue is that the matter is moot because Kragor has been released, and we have already addressed and rejected the proposition that the appeal is moot. See footnote 1 supra. Earlier, in the prosecution's answer to Kragor's delayed application for leave to appeal, it was conceded that if there was a failure to comply with the relevant court rule and statutory provisions, the family "court would have improperly extended the jurisdiction it already had, and which would otherwise have ended when [Kragor] reached the age of 19." Instead, the prosecutor argued that there was "good cause" to adjourn the hearing, elaborating as follows:

[4] MCL 712A.2a(4) provides that if a juvenile commits the offense of CSC II, "jurisdiction may be continued under [MCL 712A.18d] . . . until the juvenile is 21 years of age."

> In this case, there were two reasons to adjourn the hearing. First, there apparently was a conference of some sort held on August 19, 2011, the original date of the hearing, but it was determined that there was insufficient notice for [Kragor] to prepare for the hearing. Granted, the record could, and should, be clearer on this point, but the trial court's comments at the hearing of September 1 indicate that there were in fact discussions on this issue. Second, an adjournment to allow sufficient notice would be good cause to conduct the hearing after [Kragor's] 19th birthday. . . . .
>
> The rules create a conundrum for a juvenile court. The hearing has to be held as near as possible to the juvenile's 19th birthday. But the hearing also requires 14 days notice. What should a court do when there is a request for extension that is filed before the juvenile's 19th birthday, when the juvenile court still has jurisdiction, but the 14 days extend beyond the juvenile's 19th birthday? There are times when the reason to extend jurisdiction may not be clear until the juvenile is almost 19. And if the request to extend jurisdiction is made less than two weeks before the juvenile's 19th birthday (which would be permissible), mandating the hearing to be conducted in less than two weeks would place the juvenile court in a true Scylla and Charybdis situation. Adjourning a scheduled hearing to comply with the notice requirement is, we submit, good cause to hold the hearing after the juvenile turns 19.

We find the prosecutor's arguments unavailing. As reflected in the plain language of the pertinent court rule and statutes, the envisioned and intended procedural process with respect to extending jurisdiction past a juvenile's nineteenth birthday entails scheduling a hearing on the matter for a date as close but prior to the juvenile's nineteenth birthday, along with serving notice of the hearing at least 14 days before it is to be conducted. Stated otherwise, the hearing must be held no later than the day before the juvenile's nineteenth birthday, and it must be held on at least 14 days' notice. The only allowable deviation contemplates a situation in which the hearing was scheduled before the juvenile's nineteenth birthday, with 14 days' notice provided, and the hearing had to be adjourned for "good cause" until a date falling on or after the juvenile's nineteenth birthday. The hearing in the case at bar took place on September 1, 2011, which was more than a week after Kragor's nineteenth birthday. Accordingly, it was necessary for there to have been a previously scheduled hearing on a date prior to Kragor's nineteenth birthday that was adjourned for good cause. There was a hearing scheduled for August 19, 2011, and it was adjourned, according to the register of actions, due to lack of notice. The only notice in the record regarding a hearing on August 19, 2011, came by way of the family court's remarks at the end of the hearing on August 11, 2011, where the court noted that the prosecution sought an extension of jurisdiction and that the hearing on the request would be held on August 19. Assuming that this notice was proper in substance and form under the court rule and statutes, the notice was procedurally deficient for purposes of a hearing on August 19, as it only provided eight days' notice. Moreover, as of August 11, 2011, it was impossible to provide Kragor with 14 days' notice of a hearing to extend jurisdiction and still conduct the hearing before his nineteenth birthday on August 22, 2011.

Although the scheduled hearing on August 19, 2011, was adjourned by the court for reasons not fully explained in the record, a "good cause" for an adjournment was necessarily lacking, given that the initial request for an extension of jurisdiction was untimely, absent any expressed excuse, and compliance with the court rule and statutes could therefore not be accomplished. "Good cause" means a sound, valid, or satisfactory reason. *People v Buie*, 491 Mich 294, 319; 817 NW2d 33 (2012). And considering that the family court should have declined the request to extend jurisdiction as early as the August 11th hearing where compliance with the court rule and statutes was no longer possible, there was absolutely no sound, valid, or satisfactory reason on August 19 to adjourn the hearing until September 1. The adjournment was improper under the circumstances. Rather, the prosecution's request to extend jurisdiction should have been rejected, as there was "good cause," not to adjourn the hearing to a new date, but instead to put an end to the matter entirely.

The prosecution maintains that insufficient notice is a "good cause" to adjourn a hearing. In different contexts, an adjournment would generally be an appropriate remedy if the state fails to provide adequate notice of a hearing, but not in the setting here. To rule as suggested by the prosecutor would result in the intent of the relevant court rule and statutes being circumvented, subjecting juveniles to possible gamesmanship. For example, under the prosecutor's theory, a notice could be delivered three days before a juvenile turned nineteen years old, with the notice showing a hearing date one day before the juvenile's birthday, and the court could then properly adjourn the hearing for failure to provide 14 days' notice and set a new hearing date after the juvenile's nineteenth birthday. Such a construction of the court rule and statutory provisions is clearly not consistent with their intent and purpose as reflected in the plain language therein.

We also reject the prosecutor's argument that the court rule and statutes create a conundrum relative to situations in which the 14-day notice extends beyond a juvenile's nineteenth birthday. There is no conundrum, considering that if such a scenario arose, a court would have no choice but to reject the request to extend jurisdiction. If a prosecutor wishes for a court to extend jurisdiction beyond a juvenile's nineteenth birthday, it is incumbent upon the prosecutor to ensure that the required notice is timely delivered, such that the hearing can be conducted before the juvenile's nineteenth birthday upon the required 14 days' notice. The prosecutor complains that in some cases it may not be clear whether an extension of jurisdiction is appropriate until the juvenile is almost nineteen years old, requiring extension requests that will not allow for satisfaction of the 14-day notice mandate before the juvenile's nineteenth birthday. This is a policy argument without a basis in the language of the court rule and statutes. Moreover, if a prosecutor is uncertain about whether an extension of jurisdiction should be requested, the prosecutor can make a timely request for an extension, with notice being supplied in compliance with the court rule and statutes, and then dismiss the request and have the hearing canceled if a decision against extension is subsequently viewed as the appropriate course of action.

Additionally, we conclude that there is nothing in the record indicating that Kragor waived his rights under the pertinent court rule and statutory provisions, assuming waiver is legally possible.[5] Although the prosecutor argued at the hearing on September 1, 2011, that the complaints about compliance with the court rule and statutes were waived because it was Kragor's "decision to proceed today," and while the family court noted that "all along there [were] discussions," the record does not reflect that Kragor was agreeable or stipulated to a hearing beyond his nineteenth birthday. Indeed, at the hearing on September 1, 2011, Kragor's counsel adamantly and immediately argued that the hearing should be dismissed for lack of jurisdiction. Appeals to this Court "are heard on the original record." MCR 7.210(A). Our "review is limited to the record established by the trial court, and a party may not expand the record on appeal." *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002). Furthermore, the waiver argument, while made below, was not argued in the prosecutor's answer to the delayed application for leave. Given the lack of argument at the appellate level, and considering the absence of record support, we have no basis to invoke the doctrine of waiver.

Finally, because the court rule and statutes are clearly couched in terms of jurisdiction, it is beyond reasonable argument that a failure to comply results in an absence of jurisdiction, thereby depriving the family court of the authority to exercise further control over the juvenile. Even the prosecution agrees with this conclusion. The family court's statement that the court rule and statutes do not provide a remedy for a compliance failure entirely misses the mark. It is not a matter of remedy; rather, failure to comply results in a complete deprivation of the necessary jurisdiction to act. A court must have jurisdiction before it can obligate a party to comply with its orders. *Yoost v Caspari*, 295 Mich App 209, 221; 813 NW2d 783 (2012). Our ruling is also compelled by the plain language in MCL 712A.18c(4), which, again, provides that a "child shall be automatically released upon reaching 19 years of age[,]" unless the court has exercised its authority under MCL 712A.18d to extend jurisdiction. The family court's exercise of authority, however, was not consistent with MCL 712A.18d and therefore improper.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Henry William Saad
/s/ Deborah A. Servitto

[5] It does appear that the issue presented relates to personal jurisdiction and not subject-matter jurisdiction, and personal jurisdiction can be waived and defects corrected by stipulation, whereas subject-matter jurisdiction is not waivable. *People v Kiyoshk*, 493 Mich 923; 825 NW2d 56 (2013) (where age of juvenile offenders impacts jurisdictional questions, the issue relates to personal jurisdiction and not subject-matter jurisdiction); *People v Eaton*, 184 Mich App 649, 652-653; 459 NW2d 86 (1990), aff'd 439 Mich 919 (1992).